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DEPARTMENT OF COMMERCE

International Trade Administration

[C-834-811]

Silicon Metal from the Republic of Kazakhstan: Initiation of Countervailing Duty

Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable July 20, 2020

FOR FURTHER INFORMATION CONTACT: Justin Neuman; AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0486.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 2020, the Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of silicon metal from the Republic of Kazakhstan (Kazakhstan), filed in proper form on behalf of the petitioners,¹ domestic producers of silicon metal.² The Petition was accompanied by antidumping duty (AD) petitions concerning imports of silicon metal from Bosnia and Herzegovina, Iceland, and Malaysia.

¹ The petitioners are Globe Specialty Metals, Inc. and Mississippi Silicon LLC.

² See Petitioners' Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Silicon Metal from Bosnia and Herzegovina, Iceland, the Republic of Kazakhstan, and Malaysia," dated June 30, 2020 (the Petition).

On July 6 and 7, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petition in separate supplemental questionnaires.³ The petitioners filed responses to the supplemental questionnaires on July 8 and 10, 2020, respectively.⁴

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Government of Kazakhstan (GOK) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of silicon metal in Kazakhstan, and that imports of such products are materially injuring, or threatening material injury to, the domestic silicon metal industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the petitioners provided reasonably available information in the Petition to support their allegations.

Commerce finds that the petitioners filed the Petition on behalf of the domestic industry, because the petitioners are an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support necessary for the initiation of the requested CVD investigation.⁵

Period of Investigation

Because the Petition was filed on June 30, 2020, the period of investigation is January 1, 2019 through December 31, 2019.

³ See Commerce's Letters, "Petitions for the Imposition of Antidumping Duties on Imports of Silicon Metal from Bosnia and Herzegovina, Iceland, and Malaysia and Countervailing Duties on Imports from Kazakhstan: Supplemental Questions," dated July 6, 2020; and "Petition for the Imposition of Countervailing Duties on Imports of Silicon Metal from Kazakhstan: Supplemental Questions," dated July 7, 2020.

⁴ See Petitioners' Letters, "Silicon Metal from Bosnia and Herzegovina, Iceland, and Malaysia and Kazakhstan: General Volume Petition Supplement," dated July 8, 2020 (General Issues Supplement); and "Silicon Metal from Kazakhstan: Volume V Petition Supplement," dated July 10, 2020.

⁵ See the "Determination of Industry Support for the Petition" section, *infra*.

Scope of the Investigation

The product covered by this investigation is silicon metal from Kazakhstan. For a full description of the scope of this investigation, *see* the appendix to this notice.

Scope Comments

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).⁶ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,⁷ all such factual information should be limited to public information. Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on August 10, 2020, which is 21 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on August 20, 2020, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must also be filed on the records of the concurrent AD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS), unless an

⁶ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁷ *See* 19 CFR 351.102(b)(21) (defining "factual information").

exception applies.⁸ An electronically-filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOK of the receipt of the Petition and provided them the opportunity for consultations with respect to the Petition.⁹ Consultations were held with the GOK on July 13, 2020.¹⁰ The GOK submitted consultation remarks on July 14, 2020.¹¹

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as

⁸ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx>, and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

⁹ See Commerce's Letter, "Countervailing Duty Petition on Silicon Metal from Kazakhstan: Invitation for Consultations," dated July 1, 2020.

¹⁰ See Memorandum, "Consultations with Officials from the Government of the Republic of Kazakhstan Regarding the Countervailing Duty Investigation of Silicon Metal from the Republic of Kazakhstan," dated July 14, 2020.

¹¹ See GOK's Letter, "Silicon Metal from Kazakhstan," dated July 14, 2020.

required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹² they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹³

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation.¹⁴ Based on our analysis of the

¹² See section 771(10) of the Act.

¹³ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

¹⁴ See Volume I of the Petition at 25-28.

information submitted on the record, we have determined that silicon metal, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁵

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the appendix to this notice. To establish industry support, the petitioners provided their actual 2019 production of the domestic like product.¹⁶ To estimate the 2019 production for the entire U.S. silicon metal industry, the petitioners relied on their own 2019 production data and estimated production data reported for the non-petitioning producer (DC Alabama).¹⁷ We relied on data provided by the petitioners for purposes of measuring industry support.¹⁸

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petition.¹⁹ First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²⁰ Second, the domestic producers (or workers) have

¹⁵ For a discussion of the domestic like product analysis as applied to these cases, and information regarding industry support, *see* the Kazakhstan CVD Initiation Checklist at Attachment II (“Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Silicon Metal from Bosnia and Herzegovina, Iceland, Malaysia, and Kazakhstan”) (Attachment II). This checklist is dated concurrently with, and hereby adopted by, this notice and is on file electronically via ACCESS.

¹⁶ *See* Volume I of the Petition at 3-4 and Exhibits I-2 and I-3; *see also* General Issues Supplement at 2.

¹⁷ *See* Volume I of the Petition at 3-4 and Exhibit I-5; *see also* General Issues Supplement at 2.

¹⁸ *See* Volume I of the Petition at 3-4 and Exhibit I-5; *see also* General Issues Supplement at 2. For further discussion, *see* Attachment II of the Kazakhstan CVD Initiation Checklist.

¹⁹ *See* Volume I of the Petition at 3-4 and Exhibits I-2, I-3, and I-5; *see also* General Issues Supplement at 2. For further discussion, *see* Attachment II of the Kazakhstan CVD Initiation Checklist.

²⁰ *See* Attachment II of the Kazakhstan CVD Initiation Checklist; *see also* section 702(c)(4)(D) of the Act.

met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²¹ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²² Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.²³

Injury Test

Because Kazakhstan is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Kazakhstan materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁴

²¹ See Attachment II of the Kazakhstan CVD Initiation Checklist.

²² *Id.*

²³ *Id.*

²⁴ See Volume I of the Petition at 31 and Exhibit I-31.

The petitioners contend that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; declining market share; underselling; price depression and suppression; lost sales and revenues; declines in capacity, production, shipments, employment, prices, revenue, and profitability; and declining financial performance.²⁵ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, and negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.²⁶

Initiation of CVD Investigation

Based upon an examination of the Petition and supplemental responses, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of silicon metal from Kazakhstan benefit from countervailable subsidies conferred by the GOK.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all eight of the alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* Kazakhstan CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

²⁵ See Volume I of the Petition at 41-68 and Exhibits I-1, I-5 through I-7, I-10, I-13, I-15, I-16, I-18, I-20, I-23, I-24, I-32, I-34, and I-37 through I-59.

²⁶ See Kazakhstan CVD Initiation Checklist at Attachment III ("Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Silicon Metal from Bosnia and Herzegovina, Iceland, Kazakhstan, and Malaysia") (Attachment III).

In the Petition, the petitioners named two companies as producers of silicon metal in Kazakhstan, as well as two additional companies as potential exporters.²⁷ On July 10, 2020, Commerce released U.S. Customs and Border Protection (CBP) data for U.S. imports of silicon metal from Kazakhstan under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the appendix to this notice under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.²⁸ However, based on the CBP data, Commerce determines that there was not a large number of producers/exporters of silicon metal during the POI. Commerce therefore intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates for each publicly-identifiable company included in the CBP data. Therefore, we are selecting JSC NMC Tau-Ken Samruk and Tau-Ken Temir LLP as mandatory respondents in this proceeding. Interested parties that wish to comment on this selection, or on the CBP data, may do so within three business days of the publication date of this notice. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at <http://enforcement.trade.gov/apo>. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 PM on the date noted above, unless an exception applies.

²⁷ See Volume I of the Petition at 2.

²⁸ See Memorandum, "Petition for the Imposition of Countervailing Duties on Imports of Silicon Metal from Kazakhstan: Release of Entry Data," dated July 10, 2020.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOK via ACCESS. To the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of silicon metal from Kazakhstan are materially injuring, or threatening material injury to, a U.S. industry.²⁹ A negative ITC determination will result in this investigation being terminated.³⁰ Otherwise, this investigation will proceed according to the statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.301(b) the information is being submitted³¹ and, if the information is submitted to rebut, clarify, or correct

²⁹ See section 703(a)(2) of the Act.

³⁰ See section 703(a)(1) of the Act.

³¹ See 19 CFR 351.301(b).

factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³² Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances Commerce will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting extension requests or factual information in this investigation.

Certification Requirements

³² See 19 CFR 351.301(b)(2).

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³³ Parties must use the certification formats provided in 19 CFR 351.303(g).³⁴ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Commerce website at <http://enforcement.trade.gov/apo>. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing a notice of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.³⁵

This notice is issued and published pursuant to sections 702(c) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: July 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary

for Enforcement and Compliance.

³³ See section 782(b) of the Act.

³⁴ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

³⁵ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Appendix

Scope of the Investigation

The scope of this investigation covers all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of this investigation.

Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS. While the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

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